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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/670,152	09/26/2000	Sean M. Whitsell	7000-008	4838
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WITHROW & TERRANOVA, P.L.L.C. P.O. BOX 1287 CARY, NC 27512				
			EXAMINER BEAULIEU, YONEL	
			ART UNIT 3661	PAPER NUMBER

DATE MAILED: 10/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/670,152

Applicant(s)

WHITSELL, SEAN M.

Examiner

Yonel Beaulieu

Art Unit

3661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 and 26-56 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 13-16 is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6,9-11,17-24,26-37,41 and 51 is/are rejected.
- 7) ☒ Claim(s) 3,5,7,8,12,38-40,42-50 and 52-56 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

CK

Response to Arguments

Applicant's arguments filed 8/12/05 have been fully considered but they are not persuasive.

Applicant's arguments are centered around the elements of the reference not arranged as claimed and the reference not teaching traffic information query or request. Once again, the Examiner respectfully disagrees.

First of all, the Examiner has reproduced part of that section of the MPEP referred to by Applicant, namely, **"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."** Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). **>"When a claim covers several structures or compositions, either generically or as alternatives, the claim is deemed anticipated if any of the structures or compositions within the scope of the claim is known in the prior art."** Brown v. 3M, 265 F.3d 1349, 1351, 60 USPQ2d 1375, 1376 (Fed. Cir. 2001) (claim to a system for setting a computer clock to an offset time to address the Year 2000 (Y2K) problem, applicable to records with year date data in "at least one of two-digit, three-digit, or four-digit" representations, was held anticipated by a system that offsets year dates in only two-digit formats). See also MPEP § 2131.02.< "The identical invention must be shown in as complete detail as is contained in the ... claim.." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9

Art Unit: 3661

USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim, but this is not an *ipse dixit* test, i.e., identity of terminology is not required. In *re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990). Note that, in some circumstances, it is permissible to use multiple references in a 35 U.S.C. 102 rejection.

It appears the argument is not really for the arrangement. Assuming that is the case, it is the Examiner's position, and as supported by the very section Applicant referred to, the elements or structures of the claim need not be arranged in the order claimed so long the elements or structures achieve the intended purpose.

As to the argument that the Nimura reference not teaching a request or traffic information query, the Examiner once again invites Applicant to consider Nimura's col. 6, lines 8 - 22; col. 17, lines 39 - 50; col. 17, line - col. 18, line 12; and col. 46, lines 34 - 43 wherein Nimura teaches bi-directional information through an advance traffic information service using telephony.

In view of the above, it is believed Nimura does anticipate the claimed invention. The rejection is maintained and made final.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, 4, 6, 9 - 11, 17 – 24, 26 – 37, 41, and 51 are rejected under 35 U.S.C. 102(e) as being anticipated by Nimura et al. (US 6,125,323).

Regarding claims 1, 2, 4, 6, 9 - 11, 17 – 24, 26 – 37, 41, and 51, Nimura et al. teaches determining if travel on a learned route by a user is likely (abstract; col. 1: 6 – 12 at least); requesting, through a mobile terminal (fig. 1), traffic information pertaining to the learned route (col. 17: 39 – 51 at least) and delivering the traffic information via the mobile terminal to the user (col. 6: 8 – 22 at least); determining the location of the mobile terminal (using GPS technology; see fig. 1; col. 6: 3 – 7 at least); comparing the location with location information associated with the learned route based upon current time (col. 2: 23 – 28 at least); Nimura further uses cellular technology to query a traffic information database (remote ATIS; col. 6: 8 – 17 at least) and software for instructing the mobile (see figs. 9 – 31).

Nimura further teaches processing information pertaining to the learned route to determine if an undesirable condition is indicated and delivering an alternate route if the condition is indicated (col. 1: 52 – 58 and summary at least).

Allowable Subject Matter

Claims 3, 5, 7, 8, 12, 38 - 40, 42 – 50, and 52 – 56 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 13 – 16 are still allowed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 3661

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yonel Beaulieu whose telephone number is (703) 305-4072. The examiner can normally be reached on M-R, from 0900-1600.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas BLACK can be reached on (703) 305-8233. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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30 May 2005


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